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Comments of Focal Communications Corp.
CC Docket Nos. 96-262, 97-146
July 12, 2000

**Before the**
**FEDERAL COMMUNICATIONS COMMISSION**
**Washington, D.C. 20554**

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In the Matter of

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| Access Charge Reform | ) | CC Docket No. 96-262 |
| | ) | |
| Complete Detariffing for Competitive | ) | CC Docket No. 97-146 |
| Access Providers and Competitive | ) | |
| Local Exchange Carriers | ) | |

# COMMENTS OF FOCAL COMMUNICATIONS CORPORATION


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Dated: July 12, 2000

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## SUMMARY

Contrary to the apparent assumption of the Public Notice requesting further comment on mandatory detariffing of CLEC interstate access charges, there has not been any market failure to constrain CLEC access charges that would require detariffing as a solution, or any other solution, other than requiring the few IXCs that have refused to pay CLEC tariffed access charges to promptly due so. The Commission has correctly determined that CLECs do no possess market power in provision of terminating access and there is no basis in the record for concluding that as a general matter CLEC interstate terminating access charges are excessive. The proposed market-based unnecessary solution to CLEC interstate access charges is also premature until the local exchange market is fully competitive.

The proposed use of negotiations to set CLEC interstate access charges is infeasible and unwise even if there were a need for a broad solution to CLEC interstate terminating access charges. CLECs cannot as a practical matter negotiate interstate access charges with hundreds of IXCs and it may violate their nondiscrimination obligations under the Act to actually do so. In addition, negotiation instead of tariffing is not a suitable method of setting CLEC interstate access charges because IXCs have greater bargaining power than CLECs; the burdens on CLECs would constitute a barrier to entry and create a competitive disadvantage for CLECs *vis a vis* ILECs; and because burdens on the Commission would substantially increase. In addition, the possibility that IXCs could refuse to complete calls if negotiations fail makes the negotiation approach unacceptable.

Mandatory detariffing would not provide the same benefits as permissive detariffing, because, as stated, it would substantially increase burdens on CLECs and the Commission, competitively disadvantage CLECs, and entail the possibility of IXCs refusing to complete calls. As a practical matter, CLECs are not able to invoke the filed rate doctrine to nullify contracts with IXCs. Therefore, the filed rate doctrine is not a significant factor is evaluating whether to establish mandatory detariffing of CLEC interstate access charges.

If for any reason and to any extent the Commission establishes mandatory detariffing for CLECs, it should only do so a part of a complete solution to issues pending in this proceeding concerning CLEC interstate access charges consistent with approaches suggested by CLECs.

**Before the**
**FEDERAL COMMUNICATIONS COMMISSION**
**Washington, D.C. 20554**

In the Matters of

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# COMMENTS OF FOCAL COMMUNICATIONS CORPORATION

Focal Communications Corporation ('Focal") submits these comments in response to the opportunity established by the Commission to freshen the record in this proceeding concerning mandatory detariffing of interstate exchange access services provided by non-dominant local exchange carriers.[1] Focal is a rapidly growing facilities-based communications provider offering innovative data and voice services to large corporations, value-added resellers and Internet service providers in major markets nationwide.

## I. THERE HAS BEEN NO MARKET FAILURE

The Public Notice issued in this proceeding requests comment on whether mandatory detariffing would be a suitable solution to any market failure to constrain CLEC interstate

[1] *Commission Asks Parties to Update and Refresh Record on Mandatory Detariffing of CLEC Interstate Access Services*, Public Notice, CC Docket Nos. 96-262 and 97-146, DA 00-1268, released June 16, 2000.

terminating access charges. The Public Notice does not ask for comment on whether there has been any such market failure. Focal stresses that there is no basis in the record for making any such finding. The Commission has previously found that CLECs do not possess market power in the provision of terminating access.[2] Nor is there any basis to conclude that these charges are as a general matter excessive. In fact, the Commission has stated that CLECs may be justified in setting higher access charges than ILECs for a number of reasons,[3] and determined that CLEC access charges are not unreasonable merely because they are higher than ILEC charges.[4] Moreover, there are essentially only two IXCs - AT&T and Sprint - that are objecting to the level of some CLEC access charges. Accordingly, there is no basis for the Commission to conclude that there has been a market failure to address CLEC interstate access charges that requires mandatory detariffing.

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[2] *Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, End User Common Line Charges*, Report and Order, CC Docket Nos 96-262, 94-1, 91-213, and 95-72, 12 FCC Rcd 15982 (1997) ("*Access Reform Order*").

[3] *Hyperion Telecommunications, Inc. and Time Warner Petitions for Forbearance, Complete Detariffing for Competitive Access Providers and Competitive Local Exchange Carriers*, Memorandum Opinion and Order and Notice of Proposed Rulemaking, CC Docket No. 97-146 12 FCC Rcd 8596 (1997)("Hyperion Order and NPRM"), para 244 ("[w]e acknowledge that CLEC access rates may, in fact, be higher due to the CLECs' high start-up costs for building new networks, their small geographic service areas, and the limited number of subscribers over which CLECs can distribute costs").

[4] *Sprint Communications Company v. MGC Communications, Inc.*, File No. EB-00-MD-002, released June 9, 2000.

## II. THE PROPOSED MARKET-BASED APPROACH IS PREMATURE

The proposal to set CLEC interstate access charges through a market-based approach of negotiation, rather than tariffing, is premature. As a general matter, the competitive structure of the interexchange market is very different than that of the local exchange market. The interexchange market is comprised of carriers all of whom are non-dominant. In contrast, each local exchange market is comprised of one dominant carrier that typically possesses 96% of the market in terms of revenues[5] and several new entrants. The local exchange market is still in transition to competition, whereas the interexchange market is more or less already competitive.

This different structure of the local exchange makes the proposal to use CLEC/IXC negotiations as the way to set CLEC interstate access charges premature for two main reasons. First, as discussed, detariffing will create a significant competitive disadvantage and constitute a barrier to entry for CLECs. Until the Commission can apply detariffing to all LECs, including ILECs, it should not do so only for new entrants if that will hinder their ability to compete. Moreover, BOCs are gaining authority to offer in-region long distance service which means that under the envisioned market-based approach CLECs will be required to negotiate their access charges with the dominant providers in the market. In that environment, BOCs will have a heightened incentive and ability to harm CLECs. For example, ILECs could simply refuse to reach any agreement with a CLEC for an unreasonable period of time effectively preventing it from initiating service if it is a new entrant, or if it is an existing CLEC, from offering its

[5] *Local Competition: August 1999*, Common Carrier Bureau, Federal Communications Commission, p. 1.

customers the ability to use the BOC's long distance services. In addition, the Commission will be unable to effectively police the myriad ways that ILECs could seek disadvantage to CLECs through negotiations over CLEC access charges.

For these reasons, it is premature to impose mandatory detariffing on CLECs. The Commission should not further consider mandatory detariffing until the local exchange market is fully competitive and the Commission could impose it on all LECs.

## III. NEGOTIATION IS NOT A SUITABLE APPROACH FOR SETTING CLEC INTERSTATE ACCESS CHARGES

### A. CLEC Negotiation With Numerous IXCs Is Infeasible

Focal provides access services to many IXCs. Moreover, because CLECs can receive calls from virtually any IXC, and because CLEC customers can use any IXC through dial around and casual calling, CLECs would need to reach agreements with virtually every IXC not just those to which they currently provide access services. Focal, and CLECs in general, would not be able as a practical matter to set their interstate access charges through negotiations with hundreds of IXCs. CLECs, especially new CLECs, do not have the resources to engage in potentially extensive negotiations with many IXCs to set rates. Accordingly, the Commission should not establish mandatory detariffing because it would be infeasible for CLECs to negotiate interstate access charges with numerous IXCs.

### B. Negotiation Is Potentially Inconsistent with the Statutory Scheme

The fact that CLECs will continue to be subject to the non-discrimination provisions of the Act raises a further question of the feasibility of setting access charges through negotiation.

How can CLECs negotiate access charges on an individual basis with IXCs when they are obligated under the Act to offer the same service on a nondiscriminatory basis? If a CLEC were to agree to a rate with one IXC, how would it be possible for the CLEC to negotiate any other price for exactly the same service with other IXCs? Focal is concerned that individual negotiation of CLEC interstate access charges as potentially envisioned by the Commission could in some instances require CLECs to violate the nondiscrimination provisions of the Act. The only way for CLECs to negotiate access charges and at the same time comply with the Act might be to set access rates so low that no one could object to them. Even then, however, some IXCs would demand free access. Accordingly, relying on negotiation instead of tariffing to set CLEC interstate access charges may not be consistent with the nondiscrimination provisions of the Act.

### C. IXCs Have Superior Bargaining Power

A negotiated approach will achieve satisfactory regulatory and marketplace results only if the negotiating parties have approximately equal bargaining power. Requiring parties of unequal bargaining power to set rates will lead to market distortions including below cost pricing for some IXCs and services, over recovery from other categories of customers, and a weakened ability of some participants to compete effectively in the marketplace.

As is evident, CLECs are start-up companies competing against ILECs for local service customers. CLECs have a tiny market share.[6] CLECs cannot realistically compete for

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[6] *Id.*

customers if they are unable to offer customers the ability to receive calls from the millions of customers of any of the major IXCs. On the other hand, it would far less problematic if AT&T were unable to offer its customers the ability to reach the far fewer customers of a CLEC. In an environment of mandatory detariffing in which CLECs must negotiate to set access charges, CLECs would have little choice but to agree to AT&T's price demands for access services. Moreover, there is no reason to believe that IXC's demands would stop at the ILEC price levels. IXCs frequently expect a 25% or greater discount from the CLEC off of ILEC rates. New CLECs would be particularly vulnerable to IXCs' demands.

Sprint, the third largest domestic IXC, acknowledges that IXCs have superior bargaining power. It states that allowing carriers unilaterally to decide whether and on what terms to interconnect can result in inconvenience to the public and would permit carriers with market power to exert undue leverage *vis-a-vis* their smaller counterparts.[7] Sprint describes scenarios in which large IXCs may coerce smaller LECs to agree to uneconomic terms, such as the not unlikely possibility that a large IXC could extract lower access charges from a particular LEC than the LEC is willing to offer the rest of the IXC industry. Indeed, Sprint notes that it "has filed a formal complaint against one CLEC that it believes is charging less than its tariffed rates to Sprint's larger [IXC] competitors."[8]

Similarly AT&T has stated that:

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7 Sprint at 2.

8 *Id.* at 3.

> A CLEC confronted by an IXC customer of the CLEC's terminating access service who refuses to pay the CLEC's charges or abide by its other terms of service is placed in an untenable position. The CLEC must chose between expensive and problematic litigation with the IXC to enforce its terms under an implied contract theory (and thus accumulate higher uncollectibles), or attempt to suspend the delivery of interstate, interexchange calls placed by the IXC's end users.[9]

Accordingly, a negotiated approach to setting CLEC access charges is not satisfactory because the major industry groups do not have equal bargaining power.

### D. A Negotiated Approach Would Not be Competitively Neutral

As noted, CLECs in an environment of mandatory detariffing would be required to negotiate individually with several hundred IXCs. ILECs, on the other hand, are able to set rates by filing tariffs subject to review of the Commission. While it is appropriate that ILEC interstate access charges be fully regulated for as long as ILECs possess market power, it would nonetheless be a significant advantage *vis a vis* CLECs that ILECs would not need to individually negotiate hundreds of agreements with IXCs. Moreover, there is no question that the Commission would require IXCs to pay ILEC interstate access charges, whereas CLECs do not, and potentially would not, have that certainty in an environment of mandatory detariffing. If, as now, some IXCs receive access services from CLECs but do not pay for them, CLECs would be required to incur the time and expense of litigation in order to attempt to recover charges for interstate access services from IXCs. Given that interstate access charges are a significant part of both ILEC and CLEC revenues, it would seriously undermine the competitive position of

9 AT&T Comments, filed September 17, 1997, p. 4.

CLECs to establish for them such a radically different mechanism - individual negotiation and litigation with hundreds of IXCs - for establishment of CLEC access charges.

Previous comments also demonstrate that mandatory detariffing would place CLECs at a serious competitive disadvantage compared to ILECs. AT&T has stated in this proceeding that:

> Because ILECs will continue to exercise market power over access services for the foreseeable future, the Commission properly requires them to file tariffs for their access services. However, the existence of such tariffs means that the ILECs need not incur any costs to created switched access arrangements with any IXCs; rather they can rely on their tariffs to establish a clear, binding obligations on IXCs to pay access charges. The disadvantage faced by CLECs who are denied the option of filing tariffs is substantially compounded by the costs of and risks attributable to litigation with recalcitrant access customers concerning their obligation to comply with their access terms. The Commission should be especially reluctant to adopt any proposal that would provide the entrenched incumbents with an additional cost advantage over new entrants.[10]

Accordingly, negotiation is not a suitable approach to setting CLEC interstate access charges because it would not be competitively neutral.

### E. Detariffing Would Constitute a Barrier to Entry

Requiring IXCs and CLECs to negotiate CLEC interstate access charges would constitute a barrier to entry because a CLEC could not initiate service until it had reached agreement with hundreds of IXCs. CLECs would be faced with the choice of either providing service for free, or, delaying service until it has reached an agreement with a very large number of IXCs from whom its customers might receive interexchange service. Moreover, new market entrants with virtually no customers, would have even less bargaining power than existing CLECs. For the same reasons that it is not feasible in general for CLECs to set interstate access charges through

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[10] AT&T Comments in CC Docket 97-146 (filed September 17, 1997) at p.6-7.

negotiation, requiring CLECs to do so before offering service would constitute a formidable barrier to entry.[11]

### F. Optional Completion of Calls Is Unacceptable

A regulatory approach that genuinely relies on CLEC/IXC negotiations to set CLEC interstate access charges involves the possibility that negotiations will fail and that IXCs could choose to refuse to complete calls to, or from, customers of a CLEC with whom it has not reached agreement. (Focal assumes that the Commission would not establish a scheme in which the Commission would require that CLEC access charges be set through negotiation but also prohibit carriers from not completing calls because, under that scenario, IXCs could simply refuse to negotiate, or make unreasonable demands, but continue to receive access services from CLECs without paying for them.)

However, any "market-based" approach that involves the possibility of uncompleted calls is unacceptable for that reason alone. Focal and other commenters have already explained in this proceeding the harms that would be caused to consumers by permitting IXCs to refuse to complete calls.[12] The situation that would be created under a market-based negotiation approach to setting CLEC access charges is broadly analogous to retransmission consent issues

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[11] This would also constitute a barrier to entry for new IXCs since they would be required to negotiate with hundreds of CLEC before they could realistically offer their customers the ability to successfully terminate calls.

[12] Focal Comments filed October 29, 1999, pp. 15-16; Allegiance Comments filed October 29, 1999, pp 8-9

between broadcasters and cable operators. Legally, cable systems and broadcasters are entitled to not achieve a negotiated price and to terminate transmission of broadcast signals to cable subscribers, but in reality it is unacceptable to the public and to regulators for them to actually do so as the recent ABC-Disney/Time Warner dispute has shown.[13] If anything, it would be more unacceptable for IXCs and CLECs not to complete calls because voice service is an essential service whereas entertainment programming is not. A true negotiated approach in which carriers can choose not to complete calls based on intercarrier prices would radically transform the national telecommunications system for the worse. Accordingly, negotiation is not a viable option for determining CLEC interstate access charges insofar as it would entail the possibility of IXCs refusing to complete calls.

Moreover, even if it were otherwise acceptable, it would not be economically realistic for CLECs or IXCs to actually implement a blocking scheme for calls of carriers with whom they have not reached an access agreement.[14] This would require extensive upgrades to switches and purchase and maintenance of new databases that would approximate the cost and complexity of implementing local number portability. ILECs would also be required to implement this capability when providing switching as a UNE to CLECs. Simply stated, the probable $2.5 billion plus price tag to the industry of implementing the ability to selectively

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[13] *See e.g.*, Statement of FCC Chairman William E. Kennard on Ruling in Time Warner-Disney Dispute, FCC Press Release, May 3, 2000.

[14] See Reply Comments of AT&T, CC Docket No. 996-262, filed September 17, 1997, p. 6.

refuse to complete long distance calls is too high a price for implementation as part of any negotiated approach to setting CLEC interstate access charges which, therefore, is not acceptable for this reason as well.

### G. Administrative Burdens on the Commission Would Increase

The Commission does not currently expend significant resources on administration of its program of accepting CLEC tariffs for filing. There would be little savings in prohibiting CLECs from filing tariffs. A negotiated approach would also create substantial new burdens that would overwhelm any savings from detariffing. The Commission would be required to resolve under existing complaint rules and procedures numerous disputes between IXCs and CLECs that are not able to successfully negotiate access prices. If the Commission establishes new regulatory programs that would oversee and supervise negotiations and/or conduct arbitrations between CLECs and IXCs this also would substantially increase administrative burdens on the Commission. Further, if the Commission actually took the improvident step of establishing a thorough-going market-based approach under which IXCs could refuse to complete calls, the Commission would be overwhelmed with consumer complaints, complaints for damages between carriers and from customers, and letters from unhappy congressional representatives that inevitably would be occasioned by this approach.

### H. Negotiation Would Frustrate Consumers Ability to Choose IXCs.

At the present time, consumers essentially have complete freedom in choosing the IXC from which they would like to receive interexchange services. However, in an environment in which CLECs and IXCs must negotiate access arrangements, consumers potentially could not choose an IXC until agreement between the IXC and CLEC had been achieved. Either the CLEC or the IXC could refuse to permit the customer's choice until that time. Focal submits that this would be an unacceptable result for consumers seeking to change long distance carriers. Alternatively, if consumers may switch long distance carriers prior to a contract, some IXCs will choose to receive access services without paying form them. This is essentially the *status quo* in many respects, *i.e.* AT&T and other IXCs continue to solicit CLEC customers to presubscribe to their interexchange services but refuse to pay for access services received. While this does not frustrate consumers, it is unacceptable to CLECs because they are not being paid for services they provide to IXCs.

For all these reasons, therefore, a negotiated approach to setting CLEC interstate access charges is totally infeasible and unwise. Insofar as any solution to CLEC interstate access charges is required, other than making the two IXCs that refuse to pay tariffed charges do so, the Commission should seek other solutions along the lines that Focal and other CLECs have suggested in this proceeding.

## IV. RESPONSES TO SPECIFIC QUESTIONS IN THE PUBLIC NOTICE

### A. Whether Mandatory Detariffing Addresses Any Market Failure to Constrain Terminating Access Rates

As discussed, there is no basis in the record for assuming or concluding that there has been any market failure to constrain CLEC terminating access rates. Moreover, even assuming that there was such a market failure, mandatory detariffing would create more problems than it solves. The burdens imposed on CLECs in negotiating access charges with hundreds of IXCs, the barriers to entry that this approach would create, the likely prospect that some negotiations will fail, the possibility that some IXCs will refuse to complete calls, the unequal bargaining power between CLECs and IXCs, and the increased burdens on the Commission make mandatory detariffing a poor choice for addressing CLEC interstate access charges. Assuming a need to do anything other than promptly require IXCs to pay CLEC tariffed access charges, the Commission should adopt solutions proposed by CLECs in this proceeding rather than mandatory detariffing.

### B. Whether Mandatory Detariffing Provides a Market-Based Solution to Excessive Terminating Access Charges By Encouraging Parties to Negotiate Such Charges

For all the reasons explained above, negotiation is not a suitable approach to setting CLEC interstate access charges.

### C. Whether Mandatory Detariffing Provides the Same Benefits Identified in the *Hyperion Order and NPRM* for Permissive Detariffing

In the *Hyperion Order and NPRM*, the Commission determined that permissive detariffing would reduce transaction costs and administrative burdens for service providers, permit rapid response to market conditions through elimination of costs on carriers that attempt to make new offerings, and facilitate entry by new providers.[15] The Commission tentatively concluded that mandatory detariffing would provide these benefits and the additional public

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15 *Hyperion Order and NPRM*, para. 34.

interest benefits of precluding CLECs from attempting to use the filed rate doctrine to nullify contractual arrangements, eliminating any threat of price coordination between CLECs, and reducing administrative burdens on the Commission.[16]

Focal submits that there is no basis for the Commission to conclude that mandatory would produce the same benefits of permissive detariffing. Mandatory detariffing would not reduce transaction or administrative costs for service providers. Instead, it would astronomically increase those costs by requiring individual negotiations with hundreds of IXCs. Nor would mandatory detariffing permit rapid responses to market conditions. This is because in order to implement any change in rates a CLEC would need to renegotiate hundreds of agreements with IXCs. Far from facilitating rapid market responses, this cumbersome process would effectively frustrate any ability of CLECs to rapidly introduce price changes or new produce offerings. In contrast, under the current permissive detariffing, a CLEC may respond to market conditions and introduce new services (and also fully comply with the nondiscrimination provisions of the Act) virtually instantly by filing a tariff on one day's notice. Similarly, as explained, mandatory detariffing would not facilitate market entry in comparison to permissive detariffing but would establish a barrier to entry by requiring CLECs to negotiate hundreds of contracts with IXCs before being able to offer service. Accordingly, mandatory detariffing of CLEC services would not produce any of the benefits of permissive detariffing cited by the Commission in the *Hyperion Order and NPRM.*

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16 *Id.*

**D. Whether Mandatory Detariffing Offers Additional Public Interest Benefits Beyond Permissive Detariffing**

Mandatory detariffing would not offer any additional public interest benefits. Mandatory detariffing does not offer the benefit of a market-based solution to CLEC terminating access charges because, as discussed, there is no problem to be solved, and because a negotiated approach to setting CLEC interstate access charges is infeasible and potentially inconsistent with the Act for the all the reasons discussed above. The real problems created by this approach outweigh the nonexistent benefits.

**F. Whether Permissive Detariffing Precludes Use of the Filed Rate Doctrine to Nullify Customer Contracts**

By definition, mandatory detariffing of CLEC interstate access charges would preclude any application of the filed rate doctrine in setting rates.[17] However, the relevant issue is whether the filed rate doctrine should be given any significant weight in evaluating whether to establish mandatory detariffing.

Whatever the merits of whether IXCs are able to employ the filed rate doctrine to nullify

[17] The "filed rate doctrine" prohibits a regulated entity from charging rates "for its services other than those properly filed with the appropriate federal regulatory authority." *Arkansas Louisiana Gas Co. v. Hall,* 453 US 571, 577(1981). As the Supreme Court has noted, the doctrine creates "strict filed rates requirements and... forbid[s] equitable defenses to collection of the filed tariff." *Maislin Indus., Inc. v. Primary Steel, Inc.*, 497 US 116, 127 (1990). Simply put, a tariff filed with the FCC supersedes all other agreements between the parties. *MCI Telecom Corp. v. Best Tel. Co.*, 898 F. Supp. 868, 872 (D.S.D. Fla. 1994). Indeed, "filed tariffs are the law, not mere contracts." *MCI Telecommunications Corp. v. Garden State Inv. Corp.*, 981 F.2d 385, 387 (8th Cir. 1992). Nondiscriminatory rate setting is one of the basic rationales for the doctrine. *Wegoland Ltd. v. NYNEX Corp.*, 27 F.3d 17, 21 (2d Cir. 1994).

contracts with customers, CLECs are not able to do so with IXCs. CLECs do not have the same bargaining power in dealing with IXCs as IXCs have with respect to their retail customers. There is no evidence in the record to warrant a conclusion that CLECs have, or are able to, wield the filed rate doctrine to nullify contracts with IXCs. AT&T contends that the filed rate doctrine is simply not a concern with respect to CLECs.[18] In fact, throughout this proceeding, IXCs have opposed mandatory detariffing. If CLECs were able to abuse the filed rate doctrine with respect to their IXC customers, there would be some record evidence to that effect and presumably IXCs would support mandatory detariffing. Indeed, the record this proceeding is striking in that neither the providers of CLEC interstate access services nor the purchasers thereof support mandatory detariffing. In contrast, customers of IXCs supported detariffing of interexchange services because of concern about the filed rate doctrine. Accordingly, the Commission's concern that CLECs would use the filed rate doctrine to nullify contracts is totally misplaced and is not a benefit that could justify mandatory detariffing.

### G. Whether Detariffing Reduces the Administrative Burden On the Commission of Maintaining Tariffs

As discussed, the Commission expends very little time administering the current program of permissive detariffing and any savings engendered by mandatory detariffing would be offset by the need to resolve pricing disputes between CLECs and IXCs, address complaints for damages against carriers by customers and between carriers when calls are not completed, and the consumer and congressional outcry that would arise if the Commission implements a

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18 AT&T Comments filed September 17, 2000, p. 8.

market-based approach that permits IXCs to refuse to complete calls. Accordingly, mandatory detariffing would substantially increase, not decrease, administrative burdens on the Commission.

### F. Whether Mandatory Detariffing Would Reduce the Economic Burdens on non-ILECs of Filing Tariffs

As also explained, the time and expense of preparing tariffs is not significant in comparison to the enormous administrative burdens that would be involved under a negotiated approach in negotiating access prices with each IXC. Focal currently provides access services to a large number of IXCs. The time and expense of negotiating with multiple IXCs would vastly exceed any savings that would be involved in not having to file tariffs.

Lest there be any doubt on this issue, Focal emphasizes that it does not want mandatory detariffing in order to reduce the voluntary, essentially trivial administrative burdens of preparing and filing tariffs, or for any other reason, and is certain that the increased burdens and other disadvantages of negotiating access charges would far outweigh any benefits of mandatory detariffing. Focal believes that other CLECs will reach the same conclusion. Therefore, there is no basis in the record for concluding that mandatory detariffing would be desirable because of reduced administrative burdens on CLECs.

## IV. ANY MANDATORY DETARIFFING MUST BE PART OF A COMPREHENSIVE SOLUTION TO ISSUES CONCERNING CLEC INTERSTATE ACCESS CHARGES

For all the reasons discussed above, the Commission should not establish mandatory detariffing of CLEC interstate access services. However, if the Commission nonetheless chooses to do so to any extent, it should only do so as part of a "package deal" that will comprehensively address current issues concerning CLEC interstate access charges. These include issues raised in the *CLEC Access Charge NPRM*,[19] and the circumstance, if any, when IXCs may decline to purchase CLEC access services. This is necessary because a genuine market-based approach is premature and would lead to market dysfunctions as described herein that would harm competition and consumers. In addition, detariffing would not resolve any issues currently before the Commission concerning CLEC interstate access charges and the Commission would be compelled to resolve them (possibly on an emergency basis) through complaints and responses to termination of consumer services. Accordingly, the Commission should only consider adoption of mandatory detariffing as part of a larger decision addressing CLEC interstate access charges issues pending in this proceeding. Focal urges the Commission to adopt the proposals made by the Association for Local Telecommunications Services and CLECs.

[19] *Access Charge Reform*, Fifth Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 96-262,FCC 99-206, released August 27, 1999 ("*NPRM*" or "*Pricing Flexibility Order*").

## V. CONCLUSION

For these reasons, the Commission should not establish mandatory detariffing of CLEC interstate access charges, or if it does so, only as part of a comprehensive resolution of access charges issues that is satisfactory to CLECs.

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## CERTIFICATE OF SERVICE

I Candise M. Pharr, hereby certify that on this 12th day of July 2000, copies of the foregoing Comments of Focal Communications Corporation were delivered by hand to the persons listed below:

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